

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-195

Filed: 15 August 2017

Beaufort County, No. 14 CRS 51682

STATE OF NORTH CAROLINA

v.

JAMEL GRIFFIN

Appeal by defendant from judgment entered 28 September 2016 by Judge Wayland J. Sermons, Jr., in Beaufort County Superior Court. Heard in the Court of Appeals 7 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Tracy Nayer, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellant.

TYSON, Judge.

Jamel Griffin (“Defendant”) filed a petition for writ of certiorari to review the trial court’s restitution order entered following Defendant’s guilty plea. We allow the petition, issue the writ of certiorari, vacate the order of restitution, and remand to the trial court for a new hearing on restitution.

I. Background

Defendant pled guilty to assault with a deadly weapon inflicting serious injury. On 28 September 2016, the trial court sentenced him to an active term of imprisonment for a minimum of 26 months and a maximum of 44 months. The court further ordered Defendant to pay the sum of \$84,979.67 as restitution for medical expenses to the victim of the assault, in addition to court costs. Defendant filed notice of appeal on 11 October 2016.

Defendant raises one issue in his appellant's brief: Whether the trial court erred by ordering him to pay \$84,979.67 in restitution to Vidant Medical Center when the State offered no evidence to support such an award and relied solely on the prosecutor's unsworn statement.

Contemporaneous with his appellant's brief, Defendant filed a petition for writ of certiorari in the event this Court determines the issue he raised in his brief is not within the purview of his statutory appeal of right. In response, the State filed a motion to dismiss the appeal.

II. Right to Appeal the Restitution Order

N.C. Gen. Stat. § 15A-1444(a1) (2015) provides, in relevant part, a person who pleads guilty to a felony

is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within

the presumptive range for the defendant's prior record or conviction level and class of offense. Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

The term of imprisonment the trial court imposed upon Defendant is within the presumptive range for Defendant's prior record level and class of offense. *See* N.C. Gen. Stat. § 14-32(b) (2015) (assault with a deadly weapon inflicting serious injury is a Class E felony); N.C. Gen. Stat. § 15A-1340.17(c) (2015) (presumptive range of minimum durations for Class E prior record level II is 23 to 29 months). Consequently, Defendant's appeal is subject to dismissal. In order to raise the issue of whether the amount of restitution is supported by evidence, Defendant must file a petition for writ of certiorari, which he has done. *See* N.C. R. App. P. 21(a)(1).

We allow the State's motion to dismiss Defendant's appeal, but exercise our discretion to allow Defendant's petition for writ of certiorari and consider the merits of Defendant's argument. *See id.*

III. Restitution Order

The transcript of the plea and sentencing hearing shows the prosecutor asked the court to order Defendant to pay restitution for the victim's hospital expenses. The prosecutor presented a restitution worksheet in which Defendant be required to pay Vidant Medical Center the sum of \$84,979.67 in restitution.

The prosecutor acknowledged he did not have supporting documentation to support the worksheet and present to the court. The prosecutor did not offer any other evidence to support the State's restitution request. Defendant's counsel informed the court that he had told Defendant about the request for restitution, but "we've not agreed to anything," and that Defendant is "willing to make payments on the restitution once we can ascertain what that amount would be."

"The amount of restitution ordered by the trial court must be supported by competent evidence presented at trial or sentencing." *State v. Mauer*, 202 N.C. App. 546, 551, 688 S.E.2d 774, 777 (2010). We have repeatedly held, "a restitution worksheet, unsupported by testimony or documentation, is insufficient to support an order of restitution." *Id.* at 552, 688 S.E.2d at 778; *see also State v. Shelton*, 167 N.C. App. 225, 233, 605 S.E.2d 228, 233 (2004) (an "unsworn statement of the prosecutor is insufficient to support the amount of restitution ordered").

Applying the foregoing principles to the facts at bar, we conclude the award of restitution is not supported by any competent evidence. Defendant also did not stipulate to the amount awarded. Under these circumstances, the order of restitution must be vacated and the matter remanded for a new hearing on the issue of restitution in accordance with this opinion. *See State v. Davis*, 206 N.C. App. 545, 552, 696 S.E.2d 917, 922 (2010). The remainder of the conviction and judgment is not challenged by Defendant and is affirmed. *It is so ordered.*

STATE V. GRIFFIN

Opinion of the Court

AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR NEW
RESTITUTION HEARING.

Judges CALABRIA and MURPHY concur.

Report per Rule 30(e).